

The Right to Academic Discussion. Who is “ineligible” and on whose Decision.¹

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Dear Colleagues,

First of all I would like to thank you from the bottom of my heart for your continuous support since June 8, 2006, from the very first moment it became known that I was not allowed to enter this country to attend an academic conference at SUNY. I also thank you for this invitation. My presence here became possible through your support, through support from the ACLU, from numerous colleagues and friends, and, last but not least, through the efforts of my attorney, Mr. Scott Wilkens. I am really happy to be in this beautiful country again, among you!

Amidst an international rhetoric of universal human rights, supposedly shaping a homogeneous global order of rules and principles to determine political and individual conduct, state territories and frontiers continue to constitute the basic structural components of all social order. The state embodies, in condensed form, all the power relations (economic, political, cultural, ideological) that shape society. State-national law is the “real” law.² Inherent in this condensation of power relations is the distinction between citizens and “aliens”.

An international community proposing to submit to governance in accordance with values and principles deriving from human rights in fact appears to be inhabiting a world of state powers, each of which distinguishes between on the one hand its citizens (who have access to institutions of political representation, to citizenship and to the rights emanating there) and on the other “aliens” who possess no constitutional right to enter the country and who might or might not be “eligible”, not just for

¹ Ninety-fourth Annual Meeting of the American Association of University Professors, Washington, DC, June 14, 2008, <http://www.aaup.org/AAUP/about/events/AM/>

² However, depending on its “strength” in the framework of international relations, the state in fact expands the notion of territory to arbitrary limits (see e.g. the CIA anti-terror missions in Germany, Greece, etc.) as well as the concept of universal values by “exporting” democracy, e.g. in Afghanistan and Iraq, building defense lines outside the national territory, like the planned US anti-missile system in Azerbaijan, or “protecting” by means of diplomacy national vested interests as, e.g., the EU and US energy missions in Azerbaijan and other former Soviet Republics.

permanent or long-term residence as immigrants, but also for a brief visit unrelated to immigration. Each state possesses the “sovereign” power, to define categories of aliens who are to be “ineligible” for admission to the national territory and to decide whether a specific individual among the aliens shall be regarded as belonging in one such category. In several European countries, granting citizenship to “aliens” is considered to be “an act of grace”.

The ultimate reason for excluding aliens from a country, and thus the power to prescribe the terms and conditions on the basis of which certain aliens might be excluded, belongs in the sphere of “national security” or national interest. The question of whether or not specific aliens should be permitted to enter a country is thus a question that concerns states at the level of the executive branch of government.

(i) A consular official abroad, i.e. in the country of an “alien” applying for a non-immigrant visa, (ii) a border police officer checking the passport of this alien while consulting an electronic file to determine his or her “eligibility”, in both cases will draw upon information taken from different agencies in different countries and including data on the political activities and ideological profile of the alien in question. On the basis of this data he or she may be denied entrance to the country. This exclusion is implemented in a framework which, because of its associations with sovereignty, with national security, with prevention of illegal activity, is mostly obliged to remain covert.

The consular or police officers who implement such exclusions, by not granting visas or turning away from the borders “ineligible” aliens in possession of legal identity and travel documents (passport, visa, etc.), do not act as individuals or in an arbitrary or unauthorized way. They are mostly carrying out policies decided on at levels higher in the state hierarchy, or following concrete instructions that are set out in the files of the persons being excluded.

What is arbitrary in this procedure is not the conduct of individual officials but the policies of the repressive state apparatuses which very often categorize and exclude people on the basis of “assessments” derived from their political and ideological profiles. In this connection it is worth remembering that no information on an alien’s political and ideological profile could be compiled without “international co-operation” between the repressive apparatuses and other agencies of the various states, and first and foremost of the nation-state of which the alien is a citizen. The

background to a decision to exclude an alien from a state's national territory is thus very often the outcome of "globalization" of repressive state apparatuses, more specifically of the police and secret agencies of different countries. This clandestine exchange of information and "presumptions" compiled by a constellation of agencies is in potential collision not only with the "universality", but also with the very existence, of civil liberties and human rights (see Terry Jane Helbush, "Aliens, Deportation and the Equal Protection Clause: A Critical Reappraisal", *Golden Gate University Law Review*, Vol. 6: 23 ff., 1975-76).

The abovementioned "International of Repressive Apparatuses" made its presence felt, and many people experienced its consequences, after the great anti-WTO demonstration in Seattle in 1999. It has been with us ever since, paralleling the formation and development of the World Social Forum, the entity which co-ordinates (along with the continental, regional and/or national social forums) a constantly growing international network of non-violent initiatives, political organizations, trade unions, NGOs etc., fighting against neo-liberalism, war, inequality, poverty, exclusion and FOR civil liberties and direct democracy, alternative economic and social policies, the redistribution of wealth for the benefit of the working classes, all over the world. Let me just remind you at this point of some of the major mass mobilizations and protests against "neoliberal capitalist globalization" all over the world:

- 2000 – protests against the policies of the IMF and World Bank in Prague, demonstrations in Washington, DC., Davos (Switzerland), Philadelphia, Los Angeles, Melbourne, Montreal, Nice (France).
- 2001 – mass demonstrations against the G8 in Genoa, against the Free Trade Area of the Americas (FTAA) in Quebec City, and during the World Economic Forum in Cancun, in Davos, Quebec City, Gothenburg (Sweden), Barcelona (Spain) (during the World Bank summit), Salzburg (Austria) (World Economic Forum).
- 2002 – in New York City, Porto Alegre - Brazil, Barcelona (EU Summit), Washington, DC, (IMF/World Bank), Florence, (First European Social Forum).
- 2003 – Global protests against the Iraq war (about 12 million antiwar protesters), mass protests in Evian, Geneva, and Lausanne - Switzerland against the G8 summit, in Thessaloniki, Greece, during EU Summit. Also in Montreal, Quebec, Dublin, (the *European Competitiveness Summit* was cancelled), Paris (European Social Forum), Miami (Mobilization against the FTAA).

- 2004 – Warsaw-Poland, Santiago (Chile).
- 2005 – Mass protests in Edinburgh, Glasgow, Stirling, and Gleneagles (Scotland) against the G8 Summit, and in Hong Kong, (World Trade Organization Sixth Ministerial Conference).
- 2006 – G20 protests in Melbourne (Australia), mass demonstrations in Athens (Greece) (European Social Forum).
- 2007 – Demonstrations in Argentina and Brazil, against President Bush’s six-day tour of Latin America, also anti-Bush protests in Bogotá (Colombia), Clashes in Mexico City, mass protests in Hamburg, Heiligendamm and Rostock ahead of the G8 Summit, protests also in Washington, DC, ahead of the IMF/World Bank annual meeting.

Most EU states responded to these new movements and democratic networks claiming that “another world is possible” by implementing tremendous reinforcement of the repressive apparatuses of the state and tightening international cooperation between repressive apparatuses. This process, which preceded the 9/11 terrorist attack in New York, was subsequently further stepped up in the name of the “war against terrorism”. Activists, members of legal political organizations or NGOs and politically motivated demonstrators all became the target of (international) surveillance apparatuses or agencies created to “combat terrorism”.

Among the different states of the world following this course of strengthening repressive apparatuses and practices of surveillance, the United States undoubtedly took the lead. As in the “era of McCarthyism” in the 1940s and 1950s, in the present conjuncture after the 9/11 terrorist attack and the implementation of the “Patriot Act”, a legal framework was introduced which suppresses civil liberties in the name of “national security”, thus aggravating all trends towards arbitrariness, “exceptionalism” and “policies of emergency”, inherent in the repressive apparatus of capitalist states. American exceptional “emergency” policies suppressing civil liberties, in the name of “war against terrorism”, have in many cases been exported abroad, as in the case of abduction and illegal transportation out of European countries by the CIA of persons of Pakistani or Arab origin, with the co-operation of European secret services (see, e.g., <http://www.spiegel.de/international/spiegel/0,1518,459075,00.html>).

One could argue at this point that exceptional policies and measures, suspending certain civil liberties are indeed needed, in all cases where national security is under threat. I do not agree with this thesis, as no historical experience has ever justified it.³ I would like, however, to advance the argument by returning to the main subject of our meeting, and more specifically to the phenomenon of certain alien scholars having been deemed “ineligible” for admission to the USA. Can such decisions be regarded as measures of protection of national security? And if not, what real objectives might they be serving?

The cases of academics being barred from entering into the USA when their visit would have involved nothing other than a series of scholarly conferences and lectures deprives arguments about protection of national security of all grounding. These cases are the exact equivalent of the instances of scholars being denied the right to leave their country so as to participate in international conferences or meetings, as was common in the former Soviet Union and other nominally socialist East European countries.

It should be borne in mind that an academic conference or lecture cannot properly take place without the physical presence of the persons involved in it, i.e. the academics who have already published or plan to publish their research, theoretical approaches, ideas and interpretations, along with those who seek to question or interrogate them, confront or defend them. This applies particularly in the case of the social sciences, which are by definition conflictual in character, i.e. develop within a framework of theoretical dialog between different and often opposing schools of thought. As Albert Einstein noted in a letter to Henrik Lorenz, explaining why he had accepted an invitation to discuss his research findings at the Dutch University of Leiden, “in these unfinished things, people understand one another with difficulty unless talking face to face.” *Developments in the Law – The National Security Interest and Civil Liberties*, 85 Harv. L. Rev. 1130, 1154 (1972).

This process of vigorous dialogue, which is vital for the further development of theoretical conceptions and of scientific research, is brutally disrupted every time a scholar is hindered from participating in an international conference or meeting, whether by being denied right of departure from his/her own country, or by being barred from entering another country (as with academics found “ineligible” for

³ See, e.g., “The National Security Interest and Civil Liberties”, Nov. 11, 1755, Letter of Pennsylvania Assembly to Governor Robert Morris: “Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither safety nor Liberty”, in *Harvard Law Review*, Vol. 1130ff., 1971-72.

admission to US territory). In either case, the Executive decisions evidently serve not so much to protect national sovereignty as to impose censorship.

These acts of censorship do not comprise an attack only, or even primarily, on the persons being barred from participating. They are equally an attack on all conference participants, violently disrupting all the parameters of academic processes and scholarly discussion. Their actual target is not just the ideas that the persons excluded may be putting forward. It is the very process of theoretical debate and scientific dialogue as such. As far back as 1952 the *Bulletin of the Atomic Scientists* devoted an entire issue (Vol. 8, No. 7, Oct. 1952, pp. 210-217) to US visa policies and the related exclusion of foreign scientists from the USA, stressing its negative implications for the advance of science *in* the country. Statements condemning censorship at the borders were published by scientists and scholars as prominent as Albert Einstein, Hans Bethe, Harold Urey, Arthur Compton, Michael Polanyi, Raymond Aron...

It is thus clear enough that the designation of certain academics as “ineligible” to enter the USA does not protect the US borders and territory from intruders threatening the national security. It brutally violates intellectual and scientific dialogue taking place *within the country*. It represents an intervention in *internal* intellectual, scientific and ideological processes. This becomes even more obvious if we take into consideration the fact that views indicating the possibility and/or necessity for change in the current social, political and economic order are to a very large extent represented in public discussion and national and international fora by academics: What is actually targeted when an academic is barred from entering the USA is reason and democratic public dialogue.

What the repressive measures of the state are in reality attempting to circumscribe is the influence of ideas that might be seen as drawing into question existing forms of society and power relations within it. The state excludes as anti-national the bearers of inconvenient ideas.

A decision that at first sight seems to pertain to “aliens” and international relations proves in reality to be related to *internal* social, political and ideological *confrontations*. The actual motive behind the state’s exclusion policies is thus evidently not the national interest but the defence of specific social, political and ideological interests in the internal relation of forces. In other words: *class interests*.

On June 29, 1972, the Supreme Court of the United States reached its decision in the “Kleindienst, Attorney General, et al. v. Mandel et al.” case: After the prominent Belgian Marxist theoretician Ernest Mandel was refused a non-immigrant visa to the USA, American scientists who had invited Mandel to participate in academic conferences and discussions in the USA went to the Court to compel the Attorney General to grant Mandel a temporary non-immigrant visa. In this case Mr. Justice Douglas, dissenting the court’s rule which vindicated the Attorney General’s decision, noted the following:

“Can the Attorney General under the broad discretion entrusted in him decide that one who maintains that the earth is round can be excluded?

that no one who believes in the Darwinian theory shall be admitted?

that those who promote a Rule of Law to settle international differences rather than a Rule of Force may be barred?

that a genetic biologist who lectures on the way to create life by one sex alone is beyond the pale?

that an exponent of plate tectonics can be barred?

that one should be excluded who taught that Jesus when he arose from the Sepulcher, went east (not up) and became a teacher at Hemis Monastery in the Himalayas?

I put the issue that bluntly because national security is not involved. Nor is the infiltration of saboteurs. The Attorney General stands astride our international terminals that bring people here to bar those whose ideas are not acceptable to him. Even assuming, arguendo, that those on the outside seeking admission have no standing to complain, those who hope to benefit from the traveler's lectures do.

Thought control is not within the competence of any branch of government. Those who live here may need exposure to the ideas of people of many faiths and many creeds to further their education. We should construe the Act generously by that First Amendment standard, saying that once the State Department has concluded that our foreign relations permit or require the admission of a foreign traveler, the Attorney General is left only problems of national security, importation of heroin, or other like matters within his competence.”

In June 2006, when I was barred at the JFK international airport in NY, I was on my way to a conference at the State University of New York at Stony Brook with

the general title of “How Class Works”. I think that federal and border US authorities in their own customary way have indeed shown me “how class works”.

For centuries, since the creation of Universities, a permanent international dialogue has been taking place, shaping a global space of Reason, a global process of creating concepts and theories and a global society of scientific, philosophical and ideological controversy and debate involving different currents of thought. This globalization of Reason may prove to be incompatible with the global society of repression and exclusion that emerges out of class power and exploitation, hardly disguised behind chatter about “democracy and human rights”.

Thank you very much!